IN THE HIGH COURT OF BOMBAY AT PANAJI

WRIT PETITION NO. 284 OF 2007

M/s. IFB Industries Ltd.
L-1, Verna Electronic City
Verna, Selcete-Goa. .... Petitioner

V/s.

1. Union of India
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110001.

2. The Commissioner (Drawback),
Directorate of Drawback,
Ministry of Finance, (Dept. of Revenue),
Jeevan Deep Building,
Parliament Street,
New Delhi – 110001.

3. Chief Commissioner of Central Excise,
Pune Zone,
4/A, ICE House,
Sassoon Road,
Pune – 411001.

4. Commissioner of Customs & Central Excise,
Goa.
ICE House, Patto Plaza,
Panaji-Goa.

5. Joint Commissioner of Customs &
Central Excise, Goa,
ICE House, Patto Plaza, Goa.

6. Deputy Commissioner of Customs
(Appraising),
Custom House Marmagoa, Goa. .... Respondents

Mr. H.K. Maingi, Advocate for the Petitioner.
Mr. J. Vaz, Central Government Standing Counsel for Respondents No.1,3,4 & 5.

Coram : R.S. MOHITE, &
N.A. BRITTO, JJ.

Date : 24th July, 2007

ORAL JUDGMENT:

Heard both sides. Rule. By consent rule made returnable forthwith.

2. This petition impugns an order passed by Respondent No.4 and seeks declaration that the said order is nullity. It seeks further direction to the competent authority to decide the matter in dispute, after granting personal hearing in accordance with the direction given by this Court in terms of prayer (b) to the earlier petition, filed by the petitioner in this Court, being Writ Petition No. 398 of 2006. Earlier petition bearing Writ Petition No. 398 of 2006 was disposed of at the stage of admission by an order of the Division Bench of this Court dated 6/11/2006. Subject matter of the said petition pertained to the rejection of an application for fixation of Brand Rate of duty drawback under Rule 6(1)(a) of the Customs and Central Excise Duties Drawback Rules, 1995. It was the contention of the Petitioner that in the earlier petition, Respondent No.2 i.e. Joint Secretary (Drawback), the

Directorate of Drawback, Ministry of Finance was the competent authority vested with the powers to condone delay in filing of such an application and inspite of such application being made to him, the Respondent No.4 had wrongly passed the impugned order dated 12/02/2007. It appears that at the stage of hearing for admission, Central Government Standing Counsel appearing for Respondents No.1,3,4 and 5 in the said petition had submitted that if this Court so directed, the competent authority would hear the petitioner's application afresh for condonation of delay and pass appropriate orders. The petition was therefore allowed in terms of prayer clause (b) which reads as under:

> "In the alternative this Honourable Court may be pleased to set aside the order conveying rejection of the petitioners' request for condonation of delay and direct the competent authority by a writ of mandamous or any other writ or direction or order to hear and decide such request afresh after granting a personal hearing."

3. The competent authority was directed to dispose of the application for condonation of delay within a period of three months. It appears that after the judgment of High Court in the earlier Writ Petition, the papers were sent to the competent authority. Instead of deciding the matter of condonation of delay afresh the competent authority vide letters dated 22/12/2006 and 15/1/2007, without hearing the petitioner, communicated certain directions to the present Respondent no.4. The said directions are reproduced in paragraph

three of the impugned order dated 12/2/2007 and from the same it is evident that the competent authority has decided the matter relating to condonation of delay against the petitioner on merits.

4. The procedure followed by the competent authority is not correct and is also not in accordance with the directions given by this Court. In fact, if such directions were given to the subordinate officer, then the said officer would have no discretion except to act in accordance with the directions given to him and this is exactly what he has done while passing order dated 12/2/2007. Needless to say that the hearing given by Respondent No.4 to the petitioner, was not a hearing given by the competent authority as contemplated by the judgment and order passed by this Court in the earlier Writ Petition.

5. In the circumstances, Rule is made absolute in terms of prayer clause (a) of this petition. It is directed that the competent authority will give a hearing to the petitioner and will decide the Petitioner's application for condonation of delay dated 9/11/2005.

6. Rule is made absolute accordingly. Petition stands disposed off. It is made clear that since we are directing a personal hearing, the competent authority will pass a reasoned order, uninfluenced by the earlier directions

given by him to Respondent No.4.

R.S. MOHITE, J.

N.A. BRITTO, J.

NH/-